

STATEMENT OF

JOHN J. DOLL

**COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE**

BEFORE THE

**COMMITTEE ON SMALL BUSINESS
U.S. House of Representatives**

"The Importance of Patent Reform to Small Businesses"

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Introduction

Chairwoman Velazquez, Ranking Member Chabot, and Members of the Committee:

Thank you for this opportunity to appear before you to discuss the United States Patent and Trademark Office's (USPTO) operations, programs and initiatives involving small business.

Small businesses not only represent an important part of our patent and trademark stakeholder community, they are also a strong driving force in our nation's economy. Small businesses account for 99.7% of all employer firms in America and those firms create two out of every three new jobs and account for nearly half of America's overall employment. They have played a vital role in helping our economy add millions of new jobs and have helped reduce unemployment rates across the country.

The contribution from small and minority business and independent inventors to America's innovation and technological growth cannot be overstated.

The strength of our nation's economy continues to rest on the ingenuity of American inventors. In this new century, securing appropriate protection for inventions is almost as important as the invention itself. As inventors turn their ideas and discoveries into viable, marketable products and seek capital investment, it is critically important that they obtain the protection they need to safeguard their inventions. The USPTO is proud to play an important role in that process.

Protecting Small Business Innovation

In addition to our core functions of examination and issuance of patents and trademarks, the USPTO is actively involved with efforts to improve protection of the intellectual property of American inventors and creators on both the domestic and international levels. A wide range of USPTO's ongoing programs and initiatives serve to educate, assist and guide small businesses and independent inventors in obtaining and maintaining appropriate protection for their inventions.

USPTO Fees and Funding

We are thankful that Congress has ensured that our current fee schedule remains in effect for FY 2007. Notably, that fee schedule continues the 50 percent discount for small entity filers. The Administration is preparing for submission to Congress draft legislation that will make permanent our current fee schedule.

We are also pleased that the FY 2008 budget request gives the USPTO full access to the \$1.9 billion in fees we expect to collect. This is the fourth consecutive year that the President's budget recommends full access to collected fees, and we appreciate the continued Congressional support for that funding level.

Full access to user fees allows the USPTO to continue its successful model of disciplined focus on real measures that enhance quality and increase production, increase hiring and training, promote electronic filing and processing, provide telework opportunities for our employees and improve intellectual property protection and enforcement domestically and abroad.

Predictable funding permits us to finance the initiatives – particularly initiatives requiring long-term planning and commitment – necessary to providing and maintaining reliable, functioning systems. Without Congressional support, we would not be able to function in a business-like manner and achieve these results.

Inventors Assistance Center

In addition to the wealth of information, including the searchable issued patent and published patent application databases, available on USPTO's website (www.uspto.gov), patent applicants can contact the USPTO's Inventors Assistance Center for help on a variety of issues. Staffed by former Supervisory Patent Examiners and experienced Primary Examiners, the Center provides patent information and services to the public including assistance with filling out forms and general information on relevant rules, procedures, fees and patent examining policy. Approximately 5,000 to 6,000 calls are received each month and approximately 2,500 packages of information are sent each month to the public containing information about provisional patent applications, utility and design patent applications, fee schedules and cautionary literature about invention promotion firms.

The Center's staff members are available for questions and consultations Monday through Friday, from 8:30 A.M to 5:00 P.M. EST, at 1-800-PTO-9199.

Patent and Trademark Depository Libraries

USPTO's patent and trademark depository library (PTDL) program is a nationwide network of public, state and academic libraries authorized to disseminate patent and trademark information and to support inventors, intellectual property attorneys and agents, business people, researchers, entrepreneurs, students, historians and the general public who are not able to come to USPTO's offices in Alexandria, Va.

Services at the libraries are free, and include assistance in accessing and using patent and trademark documents, training on USPTO databases, obtaining access to the USPTO website, and hosting public seminars on intellectual property topics for novice and experienced innovators.

The PTDL network consists of 85 libraries located in 47 states, the District of Columbia, and Puerto Rico. Locations include the public libraries in New York City and Cincinnati.

On-Line Chats

On-Line chats for independent inventors are advertised and hosted by the USPTO. This gives the public the unique opportunity to log onto the “chat” and ask questions that are posted in a public forum. A panel of USPTO experts provides the answers to the questions during a one-hour chat session. On average, 200 members of the public log on to participate in the chats. Transcripts from the chats are published on USPTO's website and converted to frequently asked questions.

Independent Inventors Conferences

The USPTO sponsors conferences for independent inventors and small businesses which feature informative sessions conducted by USPTO personnel including supervisory patent examiners. These two-day events include sessions on how to conduct a patent search, what is and is not patentable, how to protect your trademark, how to write a business plan, and what to do after you receive a patent. The USPTO also invites participation at these events by representatives of local resources such as Small Business Development Centers, Patent and Trademark Depository Libraries, attorneys from the Intellectual Property Law Associations and subject matter experts in marketing.

Future conferences include those planned for New York in May and North Carolina in September 2007.

Electronic Filing and Processing

The USPTO continues to promote electronic filing and processing of patent applications as a means of reducing paper-based inefficiencies and enabling large as well as small

entities and independent inventors to file their patent applications 24-hours a day from any location in the world.

Our patents organization implemented the Electronic Filing System-Web (EFS-Web), a user friendly, Internet-based patent application and document submission program and in FY 2006 achieved a rate of 14 percent of patent applications filed electronically.

A celebration event is being planned at the USPTO to celebrate EFS-Web recently achieving the milestones of (1) receiving 50% of new patent applications on a weekly basis, and (2) the Office having received over 500,000 follow-on papers through the use of EFS-Web.

We will work with our stakeholders to further promote electronic filing and interaction with patent applicants.

We are developing the electronic Patent File Wrapper (PFW) that in conjunction with current Patent Automated Information Systems (AIS's) will allow for a fully automated, text-driven patent application processing system.

Operating in today's wired world requires that the USPTO have full electronic processing that is safe, secure and continually available to employees, applicants and stakeholders.

Innovative Processing

The USPTO is developing and reviewing a variety of innovative patent processing initiatives including a new offering called "Accelerated Examination." Under this program, which began August 26, 2006, the USPTO offers a complete examination within 12 months for applicants who need or want quick turn around.

In exchange for this quick turn around, applicants must file a complete application, agree to interviews and accelerated response periods, must file and prosecute their application electronically and must provide more information about the invention to the USPTO in the form of a prior art examination support document. The first application completed under this program was filed on September 29, 2006, and the patent issued on March 13, 2007 (less than 6 months from date of filing).

The Accelerated Examination option is available to large as well as small entities and independent inventors who determine that marketplace factors justify focused action to gain patent protection in the shortest possible period.

The USPTO is also planning a pilot program involving public peer review of patent applications. Up to 250 applications, assigned to Technology Center 2100, which examines computer related technologies, will voluntarily be placed, by the applicants, on a non-USPTO web site for public review by a peer group of patent users, attorneys and academics. The pilot group of applications will include applications filed by independent inventors and small entity filers. The public group will determine and submit to the

USPTO what they consider the best available and relevant prior art. The pilot will test whether this peer review can effectively identify prior art that might not otherwise be found by our examiners during the typical examination process. We will also make an evaluation as to whether this process results in measurable examination timesavings and quality improvements.

STOP! Hotline

As part of the Administration's STOP! initiative to combat the piracy and counterfeiting of intellectual property, USPTO manages a hotline (1-866-999-HALT) that helps small- and medium-sized businesses leverage the resources of the U.S. Government to protect their intellectual property rights in the U.S. and abroad. Callers receive information from a staff of approximately 37 intellectual property attorneys at the USPTO, with regional expertise, on matters involving how to secure patents, trademarks, and copyrights, and how to enforce those rights.

In FY 2006, the Hotline received 1,460 calls, an increase of more than 50 percent over FY 2005. Thus far in FY 2007, we have received more than 850 calls.

Stopfakes.gov

The USPTO has established a link on its website to www.stopfakes.gov which provides in-depth details of the STOP! initiative. One key feature of the website is the country specific "Toolkits" that have been created by our embassies overseas to assist small- and medium-sized businesses with intellectual property rights issues in China, Korea, Mexico, Taiwan, Russia, Brazil, and Malaysia. STOP! also seeks to increase global awareness of the risks and consequences of intellectual property crimes through a section of its website, www.stopfakes.com/smallbusiness, that is specifically designed and operated by the USPTO to answer common questions of small businesses to help them better identify and address their intellectual property protection needs.

Outreach to Small Business - Public Awareness Campaign

While counterfeiting and piracy pose a serious threat to all American businesses, small and minority businesses are particularly at risk since they often lack the knowledge and expertise to effectively combat those problems. Because small businesses typically do not have personnel or maintain large operations in other countries, theft of their intellectual property overseas can go undetected. As part of the STOP! initiative, in April of 2005, the USPTO launched an intensive national public awareness campaign to help educate small businesses on protecting their intellectual property both here and abroad.

According to the U.S. Small Business Administration, America is home to about 23 million diverse, geographically dispersed small businesses. As a result, the most significant challenge confronted by the campaign was developing a program that would appeal to – and reach – as many target smaller businesses as possible.

The campaign consists of market research, stakeholder outreach, earned media outreach, online outreach, and conferences. The market research we conducted shows that the great majority of small businesses (81 percent) are not aware that their U.S. intellectual property rights end at the U.S. border and within U.S. Territories, such as Puerto Rico.

The conferences are designed to raise awareness of intellectual property in general, and increase awareness among small businesses of the new realities of counterfeiting and piracy of intellectual property. The program explains the government's role in enforcing intellectual property rights and also the owners' responsibilities.

The conferences consist of presentations by USPTO attorney-advisors on patents, trademarks, copyright, the Patent Cooperation Treaty, trade secrets, and the specific problems posed by China. We cover the basics of intellectual property protection – why to apply, how to apply, the difference between types of intellectual property – as well as how to enforce intellectual property rights.

A handout workbook with a copy of the presentation materials is made available to the conference attendees and the programs include question and answer sessions. We recently added one-on-one consultations with our attorney-advisors as a new feature of these conferences.

Since May 2005, USPTO has presented 10 of these programs throughout the country and reached more than 2,000 small and medium-sized businesses. Members of Congress have been very supportive of this program and have participated as speakers at a number of the conferences.

These programs have received a very positive response from small businesses. More than 90 percent of the attendees have rated these programs as good or excellent and we have seen positive statements such as “the whole program shattered the myth of lazy, apathetic federal government workers,” and “the best program I’ve undertaken since beginning developing patents 15 years ago.”

This year, the USPTO is partnering with the U.S. Chamber of Commerce and other business groups to continue to hold small-business outreach seminars to give American businesses face-to-face contact with intellectual property experts.

China Conferences

The USPTO has also hosted special educational outreach conferences on China in several U.S. cities for companies ranging from small businesses contemplating entering the China market to large corporations with established presence in China. Topics have included a review of recent laws and regulations promulgated by the Chinese government that affect protection and enforcement of intellectual property; what the United States government is doing to improve intellectual property protection and enforcement in China; how to best protect business assets to avoid intellectual property problems; how to recognize product infringement; and the practical steps to take if it occurs.

Our China events have been held in Alexandria, Baltimore, Boston, Detroit, Atlanta, Chicago and Seattle.

The USPTO has reached out to both government and non-government stakeholders to help publicize the conferences and the campaign. Some of the organizations that we have worked with to promote awareness of the conferences and the issue of intellectual property theft are: Small Business Administration, Minority Business Development Centers, U.S. Export Assistance Centers, U.S. Customs and Border Protection, American Intellectual Property Law Association, Intellectual Property Owners Association, U.S. Chamber of Commerce, National Association of Manufacturers, Service Core Of Retired Executives, National Federation of Independent Business, and United Inventors Association.

Conclusion

The USPTO has implemented a wide range of initiatives and programs to address the unique concerns and needs of independent and small entity inventors and looks forward to working with the Committee to ensure that ongoing and future initiatives effectively serve the interests of those inventors.